

A Bill

Relating to age requirements for appointments to positions
in Executive agencies and in the competitive service

Be it enacted by the Senate and House of Representatives of the United
States of America in Congress assembled, That (a) subchapter II of
chapter 71 of title 5, United States Code, is amended by adding at the
end thereof the following:

"Sec. 7155. MAXIMUM-AGE ENTRANCE REQUIREMENT

"A maximum-age requirement may be applied in making an appointment to a
position in an Executive agency or in the competitive service only when
the Civil Service Commission has established such a requirement on the
basis of a determination that age is a bona fide occupational qualifica-
tion reasonably necessary to the performance of the duties of the
position."

(b) The table of sections of subchapter II of chapter 71 of title 5,
United States Code, is amended by adding at the end thereof the
following:

"Sec. 7155. Maximum-age entrance requirement."

SEC. 2. Section 3307 of title 5, United States Code, is repealed.

SEC. 3. Public Law 91-73 approved September 26, 1969 (83 Stat. 116)
is repealed.

Section Analysis

Subsection (a) of the first section of the draft bill amends subchapter II of chapter 71, title 5 of the United States Code, (Antidiscrimination in Employment), by adding a new section. The new section 7155 provides that a maximum-age limit for appointment to a position in an Executive agency or the competitive service can be established only when the Civil Service Commission finds that age is a bona fide occupational qualification reasonably necessary to the performance of the duties of a position.

Subsection (b) of the first section is a technical amendment.

Section 2 repeals the current provision of law that provides that no appropriated funds may be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

Section 3 repeals the authority of the Secretary of the Interior to determine and fix the minimum and maximum limits of age within which original appointments to the United States Park Police ~~may be made~~.

Statement of Purpose and Justification

Purpose

The bill would substitute for the present outright ban on establishment of maximum age limits for entry into the competitive service a provision authorizing the Civil Service Commission to establish maximum age limits for entry into civil service positions in Executive agencies when age is found to be a bona fide occupational requirement reasonably necessary to the performance of duties. The proposed provision would also extend the Government's clear policy against age discrimination to positions in the excepted service. Aside from the change in coverage, the primary effect of the proposal would be to give the Commission an administrative authority over Federal positions generally parallel to the authority already granted to the Secretary of Labor for positions in private industry under the Age Discrimination in Employment Act of 1967 (81 Stat. 602).

Justification

Age, by itself, should never be a bar to employment, either in private industry or in the Federal Government. At the present time, a statutory provision prevents the establishment of maximum entry ages for appointments in the Federal competitive service, but no similar provision governs appointments in the excepted service in Federal agencies. In keeping with the national policy against age discrimination, it is highly desirable to extend the prohibition against establishing age limits to positions in the excepted service. But it is equally desirable that a degree of flexibility, similar to that already existing for positions in private industry, be provided for Federal positions to permit exceptions without the necessity for Congressional action in each case when age is found to be a bona fide occupational qualification.

Congress established the present policy against age discrimination in Federal employment in 1956 when it wrote into the Independent Offices Appropriations Act (70 Stat. 355) a prohibition against the use of appropriated funds to pay the salary of any Federal employee who sets a maximum age for entry into any position in the competitive service. Now codified in section 3307, title 5 of the United States Code, the law makes no provision for administrative exceptions. A Federal agency that feels it needs relief from the strict letter of the law must turn to Congress for such relief. The Department of the Interior took its case to Congress in 1969 for the United States Park Police and was successful. Congress enacted Public Law 91-73 in September 1969, authorizing the Secretary of the Interior to set minimum and maximum age limits in the appointment of Park Police.

In light of the willingness of Congress to authorize a maximum entry age limit for one group, it has been indicated that other Federal agencies will ask for similar authority. The Department of Justice has said that it wishes to seek this authority for certain law enforcement positions under its jurisdiction. The Department of Transportation considers it

important to have maximum entry age limits for Air Traffic Controllers since this group of positions has special characteristics that argue strongly for a younger-than-usual work force. The General Services Administration feels, too, that maximum entry age limits are justifiable for certain protective positions under its jurisdiction.

The Civil Service Commission believes there is justification for setting maximum age limits for entry into certain positions in the Federal service. But it believes it is far more desirable for such limits to be set administratively than it is for these limits to be set by statute on an occupation-by-occupation and agency-by-agency basis. In the interest of uniformity and appropriate control, this authority should be vested in the Commission as part of its responsibilities for executing, administering and enforcing civil service statutes, rules, and regulations.

Granting the Civil Service Commission this authority would be in keeping with the principles expressed in the Age Discrimination in Employment Act of 1967. Among other things, that Act makes it unlawful for any employer in the private sector to refuse to hire an individual because of his age. At the same time, however, the Act recognizes that age can be a factor in employment, for its prohibitions do not apply "where age is a bona fide occupational qualification reasonably necessary to the normal operation of a business." The Secretary of Labor is granted the authority to "establish such reasonable exemptions to and from any and all provisions of this Act...."

The considerations that argue for the setting, administratively, of appropriate age limits in private industry apply with equal force in the Federal service. For example, under the authority given to him, the Secretary of Labor has made it possible to set a maximum age limit for entry into apprentice positions in private industry. The Department's regulations reflect the finding that age is a bona fide occupational qualification requirement for these positions. There is no reason why the Federal Government should not have the same flexibility to set maximum age limits for entry into its own apprentice positions. Certainly the same finding of "bona fide occupational qualification requirement" can be made for them too.

In short, the fact that age is a factor in certain employment situations has been recognized by Congress in its enactments. There is under current law an orderly procedure for setting appropriate age limitations in the private sector. Although no such procedure exists now for Federal positions, the need for one is equally justified.

No additional appropriation would be needed to carry out the provisions of this bill. Administrative costs would be minimal.

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